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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FIVE

**THE PEOPLE,**

**Plaintiff and Respondent,**

**v.**

**ALFREDO GARCIA PANGILINAN,**

**Defendant and Appellant.**

**A124955**

**(Contra Costa County  
Super. Ct. No. 5-071815-5)**

Defendant Alfredo Garcia Pangilinan (appellant) appeals his conviction by jury trial of two counts of murder (Pen. Code, § 187) (counts 1 & 2),<sup>1</sup> assault with a deadly weapon (§ 245, subd. (a)(1)) (count 3), and the jury's finding true deadly weapon use (§ 12022, subd. (b)(1)) and multiple murder special circumstance allegations (§ 190.2, subd. (a)(3)).<sup>2</sup> His sole contention on appeal is that one of the murder convictions was not supported by substantial evidence, requiring reversal of that conviction and the setting aside of the multiple murder special circumstance.

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<sup>1</sup> All further undesignated section references are to the Penal Code.

<sup>2</sup> The jury found appellant not guilty of burglary (count 5) and found the burglary and robbery special circumstances not true. A mistrial was declared as to an attempted robbery count (count 4). Appellant was sentenced to three years on count 3, two consecutive terms of life imprisonment without the possibility of parole on counts 1 and 2, and two consecutive one-year sentences for the deadly weapon use enhancement.

## BACKGROUND

In April 2006, Ronald and Maria Kagayutan owned the Green Harmony Residential Care Home (Green Harmony). At that time Green Harmony had two residents, Lucy Mogannam, who was over 90 years old, and Ginney Farley, who was in her 60's. Mogannam was healthy and alert and used a walker to aid her mobility. Farley was developmentally disabled, diabetic and legally blind; she used a walker and wheelchair. As of November 2005, Leonila Tumang worked at Green Harmony assisting Mogannam and Farley with their daily care and medications.

Prior to working at Green Harmony, Tumang befriended appellant when they both worked at a care home in Pleasant Hill. After Tumang started working at Green Harmony, appellant came to visit Tumang and Tumang's coworker "Cecilia." Sometimes appellant would borrow money from Cecilia. On a few occasions, appellant borrowed money from Tumang. Mogannam and Farley talked with appellant when he visited Green Harmony.

In about November 2005, appellant applied for a job at Green Harmony but was not hired. Thereafter, when Maria Kagayutan saw appellant in the backyard of Green Harmony, she told Tumang and Cecilia that he was not an employee and they should not let him in. After Cecilia stopped working at Green Harmony, appellant no longer came there, but he would call Tumang at Green Harmony or on her cell phone.

On April 4, 2006, appellant called Tumang and said he was at the back of Green Harmony. Tumang told him not to come. When appellant gestured that he needed to use the bathroom, she let him in through a sliding door in the master bedroom. Appellant asked Tumang for money and she said she did not have any. In response, he pushed her multiple times, shoving her into the master bedroom bathroom. He then grabbed a towel bar and began striking her with it until she bled. Appellant also hit Tumang with his fists, kicked her, grabbed her hair and banged her head into the wall. While hitting her he threatened to "kill all of you."

When Farley began knocking on the master bedroom door saying she was hungry, appellant stopped hitting Tumang, who then ran out of the bedroom. Appellant hid in the

master bedroom closet. Thereafter, while Tumang was feeding Farley and Mogannam in the kitchen, appellant called Tumang on her cell phone and the Green Harmony phone and told her to come back to the master bedroom because he wanted to tell her something. Appellant threatened Tumang: “ ‘If you don’t come in here, I’m going to be the one to come out.’ ” He also threatened to kill her and her children.

Tumang called the Kagayutans, but was unable to reach them. Tumang left a message for Maria Kagayutan stating that appellant was at Green Harmony and had struck her; she then took the bus home. While she was on the bus, appellant called her and asked where she was. Tumang told him she was not at Green Harmony and that he should leave. He again threatened to kill her and her children. Maria Kagayutan then called Tumang, who said appellant had struck her.

Maria Kagayutan contacted Ronald Kagayutan and told him to go to Green Harmony because someone was there. Ronald Kagayutan drove to Green Harmony. When no one answered the doorbell, he used his key and entered. Inside, he heard a male voice talking in the bathroom; it sounded “like an argument.” When Ronald Kagayutan got close to the kitchen, he saw Mogannam lying on the floor and a man, later identified as appellant, standing close to her, holding a knife. A lot of blood was on the floor. Ronald Kagayutan ran to a nearby house and called 911. He then saw appellant, holding a small black bag, leave Green Harmony through a side yard.

Police arrived and Mogannam was pronounced dead at the scene. Farley was found lying in the bathroom with knife wounds to her neck and chest. She was in severe distress and “quite frightened.” She repeatedly yelled, “Please stop hurting me, please stop hurting me.” The bathroom door was broken down and “in pieces.” Farley told responders she had hid in the bathroom because a “stranger” was in the house and she was afraid. Farley died three days after the attack.

About 15 minutes after receiving the 911 call, police found appellant walking unsteadily. He smelled of alcohol. While the officers struggled to detain him, appellant dropped a blood-stained knife. His pants were blood-stained. Ronald Kagayutan identified appellant as the person he saw flee from Green Harmony.

Forensic pathologist Arnold Josselson performed the autopsies on Mognannam and Farley. He opined that Mogannam died from a stab wound to her face with aspiration of blood into her lungs. The autopsy of Farley revealed bruising of her back, thighs, forearm and chin. There were superficial stab wounds to the right side of her neck and right clavicle with surrounding bruising. The clavicle wound did not enter the chest and the neck wound did not sever any large blood vessels. Farley had an endotracheal tube down her throat. Josselson opined that the large bruising in the area of the stab wounds was the result of bleeding from the stab wounds or some blunt force injury. Farley's internal systems were essentially normal and the drug levels in her blood were consistent with therapeutic use.

Josselson was unable to determine the cause of Farley's death. He opined that none of her preexisting medical conditions appeared to cause her death. He said that sudden causes of death can occur, but that Farley's autopsy showed no signs of a drug overdose, anaphylactic shock, stroke or heart attack. Presented with a hypothetical based on the facts regarding Farley's condition when found by the first responders, Josselson opined that the most likely cause of her death was "cardiac arrhythmia or abnormal heart rhythm due to stress. The stress of the assault and also if anyone's been a patient in the hospital [it] is a very stressful environment. So I would say the most likely thing would be the assault started a strain [*sic*] of events that eventually led her to have a cardiac arrhythmia and die." On cross-examination Josselson reiterated that stress from the assault was the "most likely" cause of Farley's death.

Pittsburg Police Inspector Conaty talked with Josselson during Farley's autopsy. Based on the gross autopsy findings, Josselson was unable to give Conaty a cause of Farley's death. Subsequently, after informing Josselson that Farley was subjected to a violent struggle and attack in a small confined space, Josselson told Conaty it was a "possibility" that the attack was a substantial factor in causing her death.

Dr. Laura Mosqueda testified as a prosecution expert in geriatrics, elder dependent abuse and aging with a disability. Based on her review of Farley's medical records and the records from Green Harmony, Mosqueda said that at the time of her death, Farley

suffered from diabetes, high blood pressure, high cholesterol, Down's syndrome and schizoaffective disorder. In addition, she was legally blind in both eyes and had limited use of one arm due to a fracture sustained about two months prior to her death. About six months before the assault, in October 2005, Farley was hospitalized due to poor blood sugar control. During that hospitalization she had acute renal failure from which she recovered. Mosqueda said that Green Harmony was a stable residence for Farley; her medication needs and diabetes control were taken care of there.

Mosqueda testified that Farley appeared to be "terrified" at the time of the attack and her fear was enhanced by her mental retardation and mental health problems. Mosqueda said it appeared that Farley was in "severe emotional distress" when brought to the emergency room. Farley later became agitated and was treated with Haldol, an antipsychotic medication. Farley's anxiety and fear continued throughout her hospital stay. Mosqueda described Farley as physically, cognitively, and emotionally vulnerable, putting her at risk for being a victim of abuse and making it very difficult for her to recover after being abused. Mosqueda opined that there is a "reasonable possibility" that the attack on Farley contributed to her death. Mosqueda explained: "In the autopsy report they are unable to list a cause of death. She didn't have a sudden heart attack, she didn't have a stroke. She didn't have a blood clot to her lung that would cause sudden death. There was no reason to think prior to this attack that she was ready to die. She had been hospitalized a couple of times and recovered back to baseline and seem[ingly] was doing well. And I just think it's a remarkable coincidence to say that she undergoes a savage attack, . . . it's a brutal attack and she's clearly very, very frightened following that, unable to understand what's happening, unable to process it and then suddenly dies. In my mind, those things are linked." On cross-examination, Mosqueda reiterated that there is a "reasonable possibility" that the attack contributed to Farley's death.

## DISCUSSION

Appellant contends there is insufficient evidence to establish that his assault on Farley caused her death. Consequently, he argues his conviction for Farley's murder and the multiple murder special circumstance must be set aside.

Appellant’s insufficiency of the evidence claim “requires us to determine whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” (*People v. Frye* (1998) 18 Cal.4th 894, 953, disapproved on other grounds in *People v. Doolin* (2009) 45 Cal.4th 390, 421, fn. 22.) In determining whether substantial evidence supports the judgment, “ ‘[W]e review the whole record in the light most favorable to the judgment below to determine whether it discloses substantial evidence—that is, evidence that is reasonable, credible and of solid value—from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. [Citations.]’ [Citation.] We must ‘ ‘ ‘presume in support of the judgment the existence of every fact the trier could reasonably deduce from the evidence.’ ” [Citation.]’ [Citation.] ‘[I]t is not within our province to reweigh the evidence or redetermine issues of credibility. [Citation.]’ [Citation.] ‘Reversal . . . is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support [the conviction].” [Citation.]’ [Citation.]” (*People v. Hayes* (2006) 142 Cal.App.4th 175, 179.)

“ ‘The criminal law . . . is clear that for liability to be found, the cause of the harm not only must be direct, but also not so remote as to fail to constitute the natural and probable consequence of the defendant’s act.’ [Citation.] In determining whether a defendant’s acts were the proximate cause of the death of a human being, we ask whether the evidence sufficed to permit the jury to conclude that the death was the natural and probable consequence of defendant’s act. [Citation.]” (*People v. Taylor* (2004) 119 Cal.App.4th 628, 639-640 (*Taylor*).) “[I]n homicide cases, a ‘cause of the [death of the decedent] is an act or omission that sets in motion a chain of events that produces as a direct, natural and probable consequence of the act or omission the [death] and without which the [death] would not occur.’ [Citations.]” (*People v. Schmies* (1996) 44 Cal.App.4th 38, 48.) “[A] defendant whose infliction of physical injury upon another is a cause of that person’s death is guilty of unlawful homicide even if the injury was not the only cause of death, and even if the victim was in a weakened state due to a preexisting condition. [Citations.]” (*Taylor*, at p. 641.)

Appellant argues that neither Josselson’s testimony that stress resulting from appellant’s assault was the “most likely” cause of Farley’s death, nor Mosqueda’s testimony that there is a “ ‘reasonable possibility’ ” that appellant’s attack contributed to Farley’s death are sufficient to establish the requisite causation. Citing *Cottle v. Superior Court* (1992) 3 Cal.App.4th 1367 (*Cottle*) and *Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396 (*Jones*), appellant asserts that the evidence presented “falls short of the ‘reasonable medical probability’ ” required by law to establish proximate causation. Appellant’s reliance on those cases is inapposite since they enunciate principles of causation in the context of a personal injury action. (*Cottle*, at pp. 1384-1385, quoting *Jones*, at pp. 402-403.)

In addition, citing evidence outside the record before us, appellant argues the medical literature shows that Farley’s arrhythmia could have resulted from the medications she was taking prior to the assault. Not only will we not consider evidence not before the trial court, we will not reweigh the evidence presented.

Appellant presented no evidence contradicting the opinions of Josselson and Mosqueda that the attack caused Farley to experience extreme stress which resulted in cardiac arrhythmia and ultimately Farley’s death. The testimony of Josselson and Mosqueda provides substantial evidence that despite Farley’s preexisting conditions and medications, appellant’s vicious attack on her set in motion a chain of events that produced her death as a direct, natural and probable consequence of that attack, and without that attack her death would not have occurred.

DISPOSITION

The judgment is affirmed.

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SIMONS, Acting P.J.

We concur.

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NEEDHAM, J.

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BRUINIERS, J.